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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

Conservatorship of the Person of
BRYANT F.

2d Civ. No. B202913
(Super. Ct. No. PR 070231)
(San Luis Obispo County)

GREGORY THOMAS, as Public
Guardian, etc.,

Petitioner and Respondent,

v.

BRYANT F.,

Objector and Appellant.

Bryant F. appeals an order appointing a conservator under the Lanterman-Petris-Short (LPS) Act, Welfare and Institutions Code section 5000 et seq., and permitting involuntary treatment with anti-psychotic medication. He also contends the court erred in accepting his attorney's waiver of jury trial. We dismiss the appeal as moot.

FACTS AND PROCEDURAL HISTORY

Bryant F. is 50 years old and suffers from schizophrenia. He has been institutionalized for the past five years and on several prior occasions. When not in an institution, he has been cared for by his mother. His mother is gravely ill with cancer and can no longer care for him.

On July 18, 2007, the Public Guardian filed a petition to be appointed as temporary conservator. At the time, Bryant was in custody at the San Luis Obispo Jail. The petition alleged Bryant was gravely disabled as a result of a mental disorder and that a conservator was necessary to care for his physical and mental health and so that he would not become a danger to himself or others. The court issued letters of temporary conservatorship on July 25, 2007. The Public Guardian filed a petition for appointment of a conservator on August 8, 2007. Bryant requested a jury trial, and a jury trial was set for September 17, 2007. Over Bryant's objection, his appointed counsel subsequently waived jury trial. The court accepted the waiver.

At the court trial on October 4, 2007, Rose Drago, staff psychiatrist and medical director of San Luis Obispo County Mental Health, testified at length about Bryant's mental health and his need for treatment. She had examined Bryant the previous day as well as on several previous occasions. She testified that Bryant suffers from schizophrenia with psychotic symptoms, usually auditory hallucinations and paranoid delusions. When he has not been institutionalized, he does not take his medication, and abuses methamphetamine and alcohol. He has been arrested on multiple occasions for assault and battery and other crimes.

Bryant denies being mentally ill and does not believe he needs treatment. He currently is being treated with Olanzapine which has improved his condition. While the drug has some negative side effects such as feelings of sedation and weight gain, without the drug Bryant's condition would deteriorate and thought disorganization, paranoia and auditory hallucinations would reappear and become stronger.

Dr. Drago does not believe Bryant is able to understand or knowingly evaluate his need for medication. She opined that his treatment should include antipsychotic medication and placement in a treatment facility. If Bryant is not in a structured environment, he would stop taking his medication and continue abusing methamphetamine and alcohol.

Bryant testified that he did not believe he had a mental disorder and did not need to take medication.

At the conclusion of the hearing, the court made the following findings: "[B.F.] doesn't have a place to live if it's not with his mom, he's very vague about where he could go, vague about what he could do about finding a job. And I do believe that the public guardian has, based on all of the evidence presented here this afternoon, met their burden of proof. And that evidence does support the findings that [B.F.] suffers from a severe mental disorder of schizophrenia. And that, as a result of his illness, he is gravely disabled, and unable to provide for his own food, clothing and shelter. And, further, that he is presently in need of a conservatorship."

On October 10, 2007, the court signed an order appointing the Public Guardian as conservator and that letters of conservatorship be issued and ordered that the conservatorship remain in effect until August 12, 2008. The order states: "The Court, after examining the Petition and considering the evidence, finds that . . . the facts alleged in the Petition are true, that pursuant to [the] Welfare and Institutions Code, [B.F.] is gravely disabled, and is unable to provide for his basic personal needs for food, clothing or shelter, and that no suitable alternatives to conservatorship are available." The letters authorize the conservator to "require the conservatee to receive mental health treatment and medical treatment related to remedying or preventing the recurrence of the conservatee's grave disability, including the authority to authorize psychotropic medication related specifically to conservatee's mental illness."

On appeal, Bryant contends that the court erred in accepting his counsel's waiver of jury trial. He also contends that he cannot be medicated with psychotropic drugs without his consent because the court failed to make an appropriate finding. The county contends that the appeal should be dismissed as moot as the conservatorship has ended.

DISCUSSION

Courts decide cases, not issues. An appellate court will not consider moot questions or abstract propositions of law. An appeal should be dismissed as moot when an event occurs which renders it impossible for the court to grant appellant any effective

relief. (*Eye Dog Foundation v. State Bd. of Guide Dogs for Blind* (1967) 67 Cal.2d 536, 541; *Vernon v. State* (2004) 116 Cal.App.4th 114, 120-121.)

It is manifest that we cannot grant Bryant the relief he requests because the conservatorship has ended. "In the present posture of the case, a decision on the merits would involve the court in a purely academic exercise. There is no actual controversy upon which a judgment could operate nor any effective relief which could be granted to either party." (*Bell v. Board of Supervisors* (1976) 55 Cal.App.3d 629, 637.)

Bryant argues that the case is not moot because "'collateral consequences remain even after the conservatorship has been terminated.'" (*Conservatorship of Wilson* (1982) 137 Cal.App.3d 132, 136.) We agree that in certain conservatorship cases, where the case raises important issues that are capable of repetition but are likely to evade review, a court may exercise its discretion and decide the case on the merits even though the case is technically moot. (See, e.g., *In re Lemanuel C.* (2007) 41 Cal.4th 33, 38, fn. 4.) This is not such a case.

The issues raised in the appeal, while important, have been reviewed thoroughly by the courts in numerous reported cases. The waiver of jury trial issue was decided contrary to Bryant's position in *Conservatorship of Mary K.* (1991) 234 Cal.App.3d 265. This court also has addressed the issue in three published opinions. (*People v. Otis* (1999) 70 Cal.App.4th 1174 [waiver of jury trial by counsel valid in MDO proceeding because there is no constitutional right to jury trial in a civil proceeding]; *People v. Fisher* (2006) 136 Cal.App.4th 76 [same]; *People v. Powell* (2004) 114 Cal.App.4th 1153 [counsel's waiver of jury trial valid in insanity proceedings].)

The issue of whether a conservatee can be involuntarily medicated with psychotropic drugs also has been decided contrary to the position taken by Bryant in this proceeding. (See *In re Qawi* (2004) 32 Cal.4th 1, 18 ["[T]he LPS Act provides that those gravely disabled individuals who are subject to an LPS conservatorship can be

required by their conservator to accept medical treatment 'if specified in the court order' creating the conservatorship"].)

At oral argument, appellant's counsel asserted that the court failed to make findings supporting its order authorizing the conservator to administer psychotropic drugs to treat Bryant's schizophrenia. We disagree.

Welfare and Institutions Code section 5358, subdivision (b), states: "A conservator shall also have the right, if specified in the court order, to require his or her conservatee to receive treatment related specifically to remedying or preventing the recurrence of the conservatee's being gravely disabled" In *Riese v. St. Mary's Hospital & Medical Center* (1987) 209 Cal.App.3d 1303, 1313, the court said: "The conservatee retains the right to refuse medical treatment unless the court, after making appropriate findings, specifically denies the conservatee this right in its order and authorizes the conservator to make informed consent decisions."

The court's order in this case complies with these standards. Dr. Drago testified that Bryant did not understand or acknowledge his need for medication to treat his illness and if not institutionalized, he would not take it. The court said that the Public Guardian had met its burden of proof in presenting evidence that Bryant suffers from a severe mental disorder of schizophrenia and is gravely disabled. Recently, in *In re Conservatorship and Estate of George H.* (2008) 169 Cal.App.4th 157, 165-166, the court rejected the argument that an LPS conservatee retains the right to refuse medical treatment unless the court, after making appropriate findings, specifically denies that right. Here, as in *George H.*, the trial court specified each of the powers and disabilities imposed that were warranted by the evidence. As stated in *George H.*, we "'presume in favor of the judgment every finding of fact necessary to support it warranted by the

evidence.'" (*Id.*, at p. 165.)

The appeal is dismissed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Teresa Estrada-Mullaney, Judge
Superior Court County of San Luis Obispo

Jean Matulis, under appointment by the Court of Appeal, for Appellant.

R. Wyatt Cash, County Counsel, Leslie H. Kraut, Deputy County Counsel,
for Respondent.